UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Northern Border Pipeline Company — Docket Nos. RP00-403-002, RP00-403-003 and RP01-388-003

SECOND ORDER ON COMPLIANCE WITH ORDER NO. 637

(Issued May 6, 2003)

1. This order addresses Northern Border Pipeline Company's (Northern Border) July 17, 2002 filing in Docket Nos. RP00-403-002 and RP01-403-003,[1] and August 30, 2002 filing in Docket No. RP00-403-003[2] to comply with the Commission's May 16, 2002 Order (May 16 Order) in this proceeding.[3] The majority of the proposed tariff sheets are in general compliance with the order, and therefore are accepted, to become effective as indicated in Appendices A and B, subject to the revisions discussed below. The remainder of the proposed tariff sheets relating to scheduling equality issues are rejected as moot which is discussed below. This order benefits the public by permitting Northern Border to implement policies described in Order No. 637 which are designed to enhance competition in the natural gas industry.

I. PROCEDURAL HISTORY

2. On July 17, 2002 (July 17 compliance filing), Northern Border filed revised actual tariff sheets, in Docket Nos. RP00-403-002 and RP01-388-003, to comply with the May 16 Order. Northern Border proposes to implement the tariff sheets listed on

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[1] See Appendices A and B of the filing for the proposed tariff sheets.

[2] Northern Border tendered the following tariff sheets for filing: First Revised Sheet No. 286B.01, Original Sheet No. 286B.02, and Fifth Revised Sheet No. 286C.

[3] 99 FERC ¶ 61,183 (2002).

Appendix A of its filing on September 1, 2002.[4] As to the tariff sheets listed on Appendix B of the filing that do not currently have a proposed effective date, Northern Border proposes to complete all remaining implementation on the first day of a calendar month that is at least 90 days after a final order on these tariff sheets and make the related tariff sheets effective on the same date as implementation of the related computer systems. Further, on August 30, 2002 (August 30 compliance filing), Northern Border made a supplemental filing in Docket No. RP00-403-003 to incorporate the administrative timeline for non-biddable releases, NAESB Standard 5.3.2, Version 1.5. Northern Border states that this standard was inadvertently omitted from its July 17 compliance filing.

II. NOTICE, INTERVENTIONS AND PROTESTS

3. Public notice of Northern Border's filing in Docket Nos. RP00-403-002 and RP01-388-003 was issued on July 24, 2002, and Northern Border's supplemental filing in Docket No. RP00-403-003 was issued on September 5, 2002. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2002)). Indicated Shippers,[5] Peoples Gas Light and Coke Company and North Shore Gas Company (Peoples), and Process Gas Consumers Group (PGC) filed protests to Northern Border's July 17 compliance filing, and an intervention was filed by Burlington Resources Canada Marketing Ltd. (Burlington). On September 13, 2002, Northern Border filed an answer to the protests and comments. No protests or adverse comments were filed with respect to Northern Border's supplemental filing in Docket No. RP00-403-003. Burlington's intervention is granted.

III. DISCUSSION

4. Northern Border's compliance filings generally comply with the requirements of Order No. 637 and the May 16 Order. However, numerous issues have been raised by the parties, which are discussed below.

A. Scheduling Equality

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[4] Except for Sheet Nos. 286, 286A and 286B related to the implementation of NAESB 1.5 Standard 5.3.2 with a proposed effective date of October 1, 2002, otherwise the tariff sheets listed on Appendix A of the filing have a proposed effective date of September 1, 2002.

[5] BP Energy Company, BP Canada Energy Company, Burlington Resources Canada Marketing Ltd, and Dynegy Marketing and Trade.

5. The May 16 Order found that Northern Border had not complied with the requirements of Section 284.12(c)(1)(ii) of the Commission's regulations concerning scheduling equality for capacity release.

1. July 17 and August 30 Compliance Filings

6. In its July 17 compliance filing, Northern Border revised its General Terms and Conditions (GT&C) Section 27.24 (Sheet Nos. 286, 286A and 286B) to incorporate NAESB capacity release timeline in NAESB Standard 5.3.2, Version 1.5. In its August 30 compliance filing, Northern Border supplemented its July 17 compliance filing by incorporating the administrative timeline for non-biddable releases, NAESB Standard 5.3.2, Version 1.5 into its tariff (see, Sheet Nos. 286B.01, 286B.02, and 286C). Northern Border states that this portion of the timeline standard was inadvertently omitted from its July 17 compliance filing.

2. Commission Ruling

7. In its August 1, 2002 filing to comply with Order No. 587-O in Docket No. RP02-484-001, Northern Border filed tariffs to incorporate NAESB Standard 5.3.2, Version 1.5, into its tariff. On January 31, 2003, the Commission issued a Director letter order accepting the tariff sheets, filed in Docket No. RP02-484-001, to become effective October 1, 2002. Consequently, the scheduling equality related tariff sheets filed in Docket No. RP00-403-003 (First Revised Sheet No. 286B.01, Original Sheet No. 286B.02, and Fifth Revised Sheet No. 286C), and Docket Nos. RP00-403-002 and RP01-388-003 (Fifth Revised Sheet No. 286, Second Revised Sheet No. 286A, Second Revised Sheet No. 286B, Original Sheet No. 286B.01, and Fourth Revised Sheet No. 286C) to implement NAESB capacity release timeline in NAESB Standard 5.3.2, Version 1.5, have been superceded and are rejected as moot.

B. Segmentation, Flexible Point Rights and Secondary Point Priority

1. Segmentation - Forwardhauls/Backhauls at a Single Point

8. Proposed GT&C Section 17.15 provided that the combination of a releasing and replacement shippers' nominations cannot exceed the contract demand of the underlying service agreement "at any location along the associated Transportation Path."[6] The May

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[6]Former GT&C Section 17.15 (now proposed GT&C Section 17.3) provided that

(continued...)

16 Order found that the phrase "any location" could be interpreted to refer to a single delivery point, thereby preventing a shipper from delivering full contract quantities via a forwardhaul/backhaul combination to that point. Such result would be inconsistent with Commission policy as expressed in Order No. 637-A. [7]

9. However, the Commission stated that its policy regarding forwardhauls and backhauls to a single point was currently under review by the Commission as a result of the partial remand of Order Nos. 637, et al., by the Court of Appeals for the District of Columbia Circuit.[8] Therefore, the Commission stated that it would not require that a pipeline allow a shipper to deliver full contract quantities via forwardhauls and backhauls to a single delivery point until after it had acted on the Court's remand.

a. July 17 Compliance Filing

10. Northern Border clarified that until the Commission issues an order on the Court remand, the meaning of "at any location" in GT&C Section 17.3 shall apply to any point or location on Northern Border's pipeline system. As a result, Northern Border will not permit overlapping nomination at a single receipt or delivery point (See, Sheet No. 266A).

b. Commission Ruling

11. On October 31, 2002, the Commission issued an order on the Court remand.[9] The Commission reaffirmed its prior determination that a segmented transaction consisting of a backhaul and a forwardhaul to the same point that exceeds a shipper's contract demand at the point is permissible. Pipelines are required to file to make this change in their terms

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[6](...continued)
Northern Border will not permit a shipper to segment capacity when nominations by releasing and replacement shippers exceed the contract maximum receipt quantity of the underlying service agreement at any location along the associated transportation path.

[7]Order No. 637-A, III FERC Stats. & Reg. Regulations Preambles ¶ 31,099 at 31,503.

[8]Interstate Natural Gas Ass'n. V. Federal Energy Regulatory Commission, No. 98-1333, slip op. at 25-27 (CADC April 5, 2002).

[9]101 FERC ¶ 61,127 (2003).

and conditions of service within thirty days of the order on Court Remand.[10] Northern Border has not made a compliance filing in this regard. Consequently, Northern Border is directed to revise its tariff so that a segmented transaction consisting of a backhaul and a forwardhaul to the same point that exceeds a shipper's contract demand at the point is permitted.

2. Flexible Point Rights/Elevation to Primary

12. In the May 16 Order, the Commission noted that Northern Border's proposed GT&C Section 17.15 provides a firm shipper the right to segment its transportation path into separate parts for its own use and through capacity release, and permits a shipper to request relocation of its primary capacity scheduling rights within its path.[11] However, the Commission stated that proposed GT&C Section 17.14 is unclear and appears to suggest that a shipper can change primary points but not add new primary points to assist segmentation. The Commission directed Northern Border to clarify its tariff to reflect the Texas Eastern/El Paso policy[12] and thereby allow the releasing and replacement shippers both to choose primary points consistent with their mainline contract demand.

13. Further, the Commission stated that proposed GT&C Section 17.14 does not describe what Northern Border will do when there is insufficient firm point capacity at the requested points. Northern Border was directed to clarify its tariff in this regard.

14. Lastly, the Commission stated that the proposed default procedure for the assignment of primary point rights (proposed Section 17.13) limits a firm shipper's ability to use its firm capacity rights, since it only allows Northern Border to determine at which points a shipper's capacity will be primary. The Commission directed Northern Border to

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[10] Id.

[11] Firm shippers on Northern Border's system contract for capacity on a receipt and delivery point basis and pay a reservation rate on a Dth-mile basis rather than on a zone-rate basis. Accordingly, the shippers only pay for service along their primary path.

[12] Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,452 (1995); El Paso Natural Gas Company, 62 FERC ¶ 63,311, at 62,991 (1993).

make the tariff changes in order to provide options[13] for firm shippers to decide how to use their firm capacity.

a. July 17 Compliance Filing

15. Northern Border proposes to revise GT&C Section 17 by replacing GT&C Subsections 17.1, 17.2 and 17.3 of the pro forma tariff with new GT&C Subsections 17.1, 17.2 and 17.3 filed to comply with directives stated above.

16. Proposed Section 17.1 provides that a shipper may nominate any receipt or delivery point within its transportation path and shall have a higher capacity allocation priority than at receipt and delivery points outside the path. The section also provides that outside-the-path nominations are subject to a milage-based incremental out-of-transportation-path charge.

17. Proposed Subsection 17.21 (Relocation and/or Addition of Primary Capacity Scheduling Rights) provides that a shipper's primary scheduling rights are initially located at the receipt and delivery points that define the shipper's transportation path. Proposed Section 17.22 provides that, subject to availability of capacity, the shipper can relocate or add primary capacity scheduling rights at one or more receipt or delivery points within its transportation path up to a quantity equal to the shipper's mainline contract demand.[14] The shipper must request such a relocation by 1:00 p.m. on the day before nominations are due, and include in its request the term of the relocation; Northern Border will respond to the request by one hour before nominations are due. Northern Border will grant the request "to the extent firm point capacity exists" at the requested point "and when no generally available pipeline capacity exists." If there is insufficient capacity at the point, the capacity at the requested point will be allocated pro rata to the requesting shippers based on their relative mainline contract demands.

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[13] Process Gas Consumers Group, and Alcoa Inc. (Industrials) (one of the protestors to Northern Border's initial Order No. 637 compliance filing) suggests the following options: (1) the shipper will request the priority, primary or secondary, to be assigned to the points it desires to utilize within its transportation path, (2) the point priorities will be assigned according to the shipper's direction and to the extent capacity is available at a point, and (3) Northern Border will obtain consent from an affected shipper prior to implementing any point changes operationally necessary to alleviate a constraint.

[14] Northern Border refers to a shipper's mainline contract demand as its "Total Maximum Receipt Quantity."

18. Proposed Section 17.22 also provides that, if the establishment of primary scheduling rights at a point creates an operational constraint at the point, the establishment of the primary capacity scheduling rights will be subject to Northern Border obtaining the consent of the affected shippers. At the end of the relocation period, the shipper can return to its initial primary capacity scheduling rights position. However, Northern Border reserves the right to sell the remaining capacity for the term of the relocation. Proposed Section 17.23 provides that the relocation of a shipper's primary scheduling rights within its transportation path will not change the shipper's rate.

19. Proposed Section 17.32 permits Rate Schedule T-1 firm shippers to segment their capacity for the purpose of capacity release. That section provides that, subject to the availability of firm point capacity in the direction of flow specified in the releasing or replacement shipper's transportation path, such shipper shall have the right to elevate the scheduling rights from secondary to primary at one or more points within its transportation path up to a total quantity equal to the shipper's mainline contract demand.

20. Northern Border has removed from the proposed pro forma tariff sheets GT&C Subsection 17.13 (Default Procedure).

b. Protests and Comments

21. Indicated Shippers states that proposed new GT&C Section 17.22 appears to restrict the cumulative firm service entitlements on the separate segments to shipper's daily firm transportation entitlement (MDQ).[15] Indicated Shippers contends that, absent the right to establish additional primary point entitlements, segmented transportation would not have the highest scheduling priority and, hence, a shipper would not be able to utilize the segmented capacity on a reliable basis. Indicated Shippers continues that the proposal

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[15] Indicated Shippers used an example to explain its point: Assuming that shipper #1 has 10,000 Dth of firm capacity from Port of Morgan, Montana (Morgan) to North Hayden, Illinois (North Hayden); assuming that the shipper segments its capacity so that on the same gas day it can (1) ship 10,000 Dth from Morgan to Ventura, Iowa (Ventura), which is located between Morgan and North Hayden, and (2) ship 10,000 Dth from Ventura to North Hayden. Also, assume that there is sufficient capacity at Ventura to establish this location as a primary delivery point for the Morgan-Ventura segment, and as a primary receipt point for the Ventura-North Hayden segment. As a result receipt point entitlements would be 20,000 Dth (10,000 Dth at Morgan and 10,000 at Ventura), and aggregate delivery point entitlements would be 20,000 Dth (10,000 Dth at Ventura and 10,000 Dth at North Hayden). However, the shipper would not exceed its MDQ on any portion of the pipeline.

would, in turn, frustrate the very reason for segmenting capacity to make additional capacity available to the market.[16] Indicated Shippers requests that the Commission reaffirm here that a shipper on Northern Border can create additional primary point entitlements via segmentation. To eliminate any confusion, Indicated Shippers suggests that Northern Border revise the proposed provision (GT&C Section 17.22) to add the following underlined language, and delete the following bracketed language:

> Subject to the availability of firm point capacity on Company's system, a shipper shall have the ability to relocate or add primary capacity scheduling rights at one or more Points of Receipt or Delivery within its Transportation Path up to a quantity of gas [equal to] as long as the Shipper's separate Receipt or Delivery rights at any single Point of Receipt or Delivery do not exceed the Shipper's Total/Agreed maximum Receipt Quantity.

22. Indicated Shippers states that proposed Section 17.22 would improperly require any new primary points to be within a shipper's Transportation Path. Indicated Shippers argues that there is no operational or rate justification for restricting additional primary points to the original primary path. Northern Border's rates are based on the distance between the primary receipt and delivery point (as measured in Dth-miles);[17] thus if a shipper established an additional primary point outside the path it will pay a surcharge to compensate Northern Border for the additional capacity. As a result, Indicated Shippers requests that a shipper be permitted to establish an additional primary point anywhere on Northern Border's system.

23. Indicated Shippers states that proposed new Section 17.22 provides that Northern Border would allow shippers to establish new primary points even if this would impair existing firm service, as long as the affected shippers give their consent. Indicated Shippers requests that this proposal be rejected, because the Commission's regulations prohibit a pipeline from contracting for any service that compromises its ability to render

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[16] Citing, Order No. 637-A at 31,594. "Permitting flexibility in the selection of primary points in segmented releases can be important in creating effective competition between pipeline services and released capacity... In order to equalize competition between pipeline and released capacity, pipelines need to permit shippers greater flexibility in selecting primary points than pipelines have in the past."

[17] See, Second Revised Sheet No. 98.

firm service to existing firm shippers.[18] Further, Indicated Shippers points out that a proposal which downgrades a firm service to interruptible status constitutes a negotiated service condition and, therefore, violates Commission policy.[19] Indicated Shippers states that a pipeline cannot sell capacity if this would impair existing firm service. Indicated Shippers stresses that this principle applies regardless of whether the affected shippers say that they are willing to tolerate the downgrading of their service to interruptible status.

24. Peoples seeks clarification of a part of proposed new Section 17.32 concerning primary point rights in the context of a segmented capacity release, which states:

> Company shall elevate the secondary capacity scheduling rights to primary capacity scheduling right to the extent that firm point capacity exists at the Point(s) of Receipt or Delivery requested by Replacement or Releasing Shipper and when no generally available pipeline capacity exists pursuant to Subsection 17.22.

25. Specifically, Peoples states that the phrase "and when no generally available pipeline capacity exists" does not make sense in the context of defining when a point change can occur. Peoples states if capacity exists at the point, then what is the relevance of the presence or absence of generally available pipeline capacity.

c. Northern Border's Reply

26. Northern Border states that Indicated Shippers seeks to expand the contractual primary capacity scheduling rights beyond that conveyed to a shipper in a service agreement. Northern Border reiterates that proposed new GT&C Section 17.22 is clear that a shipper may relocate or add primary points to the extent primary capacity is available at a point in its Transportation Path. Further, the sum of the primary point capacity at either the receipt or delivery points cannot exceed the Total Maximum Receipt Quantity (MRQ). Northern Border states that Indicated Shippers suggests that a firm shipper should be able to establish primary point capacity scheduling rights at numerous points along its path that would exceed the total MRQ. Northern Border argues that Order No. 637-A provides that "pipelines may need to impose some restrictions on primary point rights...to prevent

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[18] Citing, 18 C.F.R. § 284.7(a)(3).

[19] Citing, Transwestern Pipeline Company, Docket No. RP97-288-009, et al., 100 FERC ¶ 61,058 (2002).

hoarding of capacity by some shippers.'[20] Northern Border asserts that any change to proposed GT&C Section 17.22 that abolishes the tie between total MRQ and the quantity of primary scheduling capacity rights assigned to shipper would negate the contractual commitment between Northern Border and shipper.

27. Using the same example contained in Indicated Shippers' protest, Northern Border explains further that if a shipper has 10,000 Dth of primary receipt point capacity scheduling rights at Morgan receipt point and the shipper requests to establish 6,000 Dth of primary delivery point capacity scheduling rights at Ventura, Northern Border would first validate such request to determine that primary delivery rights capacity exists at Ventura. If such capacity is available, Northern Border would approve the shipper's request. Northern Border explains that, in order for the sum of the primary delivery point capacity scheduling rights equal the shipper's total MRQ of 10,000 Dth, as described by the proposed new GT&C Section 17.22, it would reduce the shipper's primary capacity scheduling rights at North Hayden to 4,000 Dth/day.

28. Northern Border states that, because the relocation of primary delivery point scheduling rights has no effect on the shipper's Transportation Path, the shipper retains its right to transport 10,000 Dth/day from Ventura to North Hayden on a firm basis. However, up to 4,000 Dth/day nominated for delivery at North Hayden would now be granted primary point scheduling rights; any quantity of gas nominated for delivery at North Hayden above the 4,000 Dth/day (up to the shipper's total MRQ) would be treated as secondary in-path until such time the primary rights at Ventura are relocated back to North Hayden when the Ventura primary point rights relocation expires.

29. Northern Border contends that, without restriction or additional charge, all firm shippers would attempt to obtain all the available point capacity on a primary basis. In the end, Northern Border argues that it would not be able to approve further requests from existing shippers to add or change primary point capacity rights at locations where such rights have been taken up by other shippers through a flexible point mechanism. Under this scenario, Northern Border asserts that potential shippers would be discouraged from purchasing available transportation capacity from Northern Border or from an existing firm shipper through a capacity release, because the ability to receive gas into or deliver gas out of such firm transportation capacity would be at a secondary basis, i.e., no firm receipt or delivery point capacity would be available.

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[20]Citing, Order No. 637-A, at 31,593-594.

30. As to the issue of permitting primary point capacity scheduling rights through segmentation outside a firm shipper's transportation path, Northern Border states that if such scheduling rights were allowed, existing shippers would have the ability to hoard all of the available point capacity on a primary basis and foreclose potential shippers from purchasing available pipeline capacity on a firm basis. Therefore, according to Northern Border, it was proper to limit a firm shipper's transportation of gas outside its path to a secondary basis with an additional mileage-based cost.

31. Northern Border states its proposed new GT&C Section 17.22, which provides that the establishment of the primary capacity scheduling rights will be subject to Northern Border obtaining consent from the affected shipper prior to implementing any primary capacity scheduling rights changes, was added in response to the May 16 Order.

32. Regarding the issue raised by Peoples with respect to the proposed provision in new GT&C Section 17.32, Northern Border states that the latter part of the provision is included to prevent available pipeline capacity from being unmatched with primary point capacity and becoming stranded capacity. Northern Border contends that the purpose of the language is to reserve point capacity for available pipeline capacity as the Commission recognized as an appropriate solution in Order No. 637-A. [21]

d. Commission Ruling

33. It appears that both Northern Border and Indicated Shippers misunderstood the Commission's flexible point policy enunciated in Texas Eastern/El Paso. Specifically, they appear to be confused between a shipper's segmentation for its own use via nomination and segmentation via capacity release. The Commission did not require that when a shipper segments for its own use (via nomination) it is entitled to primary points up to the contract demand on each segment as suggested by Indicated Shippers. Instead, the Commission permitted Northern Border, as other pipelines have been permitted, to limit the total primary point capacity that each shipper can reserve to its contract demand.[22] Proposed GT&C Section 17.22 is consistent with the Commission's flexible point policy with

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[21] Order No. 637-A at 31,594, n.121. A pipeline can "protect its ability to sell available mainline capacity by reserving an appropriate percentage of the...point capacity to be associated with the unsubscribed mainline capacity."

[22] See, Great Lakes Gas Transmission Limited Partnership, 101 FERC ¶ 61,206 at 61,189; Texas Gas Transmission Corp., 100 FERC ¶ 61,218 at 61,768 (2002); CMS Trunkline Gas Co., 100 FERC ¶ 61,048 at 61,173; and Panhandle Eastern Pipe Line Co., 97 FERC ¶ 61,046 at 61,261-63.

respect to segmentation via nomination. On the other hand, when a shipper releases capacity to another shipper, the replacement shipper can request primary point capacity up to its mainline contract demand. However, proposed new GT&C Section 17.3 (Segmentation Rights), can be read as permitting the releasing shipper and replacement shipper to choose their primary point rights only up to a total quantity of gas not exceeding the releasing shipper's total maximum receipt quantity. That is inconsistent with the Commission's policy that the releasing and replacement shippers should each be permitted to obtain primary point rights up to their individual contract demands. Northern Border is directed to revise its tariff consistent with the Texas Eastern/El Paso policy.

34. The purpose of the Commission's policy that replacement shippers should have the opportunity to obtain their own primary points is to enhance competition in the sale of capacity between the pipeline and shippers through segmentation and capacity release. As the Commission explained in Order No. 637-A,[23] if replacement shippers were limited to the use of segmented points on a secondary basis, the pipeline would still retain the right to sell that point capacity on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented capacity release transactions.[24]

35. Indicated Shippers objects to the provision in Section 17.22 that limits the additional or relocated primary scheduling rights that shippers can obtain pursuant to Sections 17.2 and 17.3 procedures to points that are within a shipper's transportation path. We reject this protest for two reasons. First, Sections 17.2 and 17.3 permit shippers temporarily to obtain primary scheduling rights at points other than the primary points listed in their contracts, while retaining the right to return to the permanent primary points listed in their contracts after the temporary relocation period. Thus, those sections do not lead to a permanent change in the shipper's contract. Commission policy does not require pipelines to permit such temporary relocations of primary scheduling rights, with the shipper retaining a right to return to its original primary point. Rather, the Commission has allowed pipelines to treat primary point changes as permanent, so that where a replacement shipper changes a releasing shipper's primary point the pipeline can market the abandoned primary point capacity to a new shipper on a permanent basis.[25] Second, firm shippers on Northern Border's system do not pay for any capacity outside their contractual paths, since

[23] Order No. 637-A at 31,594.

[24] 101 FERC ¶ 61,206 at p. 61,898 (2002).

[25] Great Lakes Transmission Limited Partnership, 101 FERC ¶ 61,206 at p. 10 (2002).

they pay a mileage-based reservation rate and not a zone-based reservation rate. Given these two facts, Northern Border can reasonably limit firm shipper's ability to obtain temporary relocations of primary scheduling rights to points within a shipper's permanent contractual path.

36. However, the Commission has required that pipelines permit shippers to move the primary points listed in their contracts to another point that is outside their contractual path on a permanent basis, subject to availability of capacity.[26] Northern Border is directed to clarify its tariff to permit such permanent changes of primary points, subject to the payment of the appropriate additional incremental rate to cover the cost of the additional capacity reserved.

37. The Commission also requires Northern Border to eliminate the provision in proposed Section 17.22 permitting it to deny a request for primary scheduling rights at a point "when no generally available pipeline capacity exists." Northern Border states that this provision is intended to permit it to reserve primary point capacity necessary to sell associated unsubscribed capacity. The commission has rejected a similar proposal on the ground that reserving primary point capacity should be unnecessary on systems where the Commission has allowed the pipeline to limit primary point capacity to mainline CD.[27] Since the same circumstance exists here, the Commission rejects Northern Border's proposal to reserve primary point capacity for unsubscribed mainline capacity.

38. Finally, Indicated Shippers argues that Northern Border must not be permitted to allow firm shippers to establish new primary points where existing firm service would be impaired, even if the affected shippers give their consent. Indicated Shippers requests that this proposal be rejected. Northern Border answers that the proposed language was added in response to the May 16 Order. Northern Border misunderstood the May 16 Order in this regard. The May 16 Order addressed a proposal under which a releasing shipper could submit a request to reassign its primary capacity scheduling rights to a replacement shipper. The proposal stated that, if Northern Border had the capacity available at the requested points, both the releasing and replacement shipper would be accorded primary scheduling rights. However, it appeared that, if there was insufficient capacity available, proposed Section 17.13 would require that the primary scheduling rights be assigned to the point nearest to the capacity constrained point. The Commission found that the Industrials' suggestion to provide options for firm shippers to decide how to use their firm capacity was a reasonable resolution. Here, Northern Border proposes to replace pro forma tariff

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[26] ANR Pipeline Co., 103 FERC ¶ 61, 022, at p. 44 (2003).

[27] Id., at p. 45.

(GT&C Subsections 17.1, 17.2 and 17.3) with proposed new GT&C Subsections 17.1, 17.2 and 17.3 filed herein. The proposed new provisions do not contain the same default procedure language that concerned the Commission and the protestors. Nevertheless, we agree with Indicated Shippers that the Commission's regulations prohibit a pipeline from contracting for any service that compromises its ability to render firm service to existing firm shippers, even if the affected shippers are willing to tolerate the downgrading of their firm service to interruptible status. Northern Border is directed to revise its tariff consistent with the Commission's regulation.[28]

3. Mainline Priority at Secondary Points

39. In the May 16 Order, the Commission stated that, if there is available capacity, a pipeline with mileage based rates should allow shippers the right to use secondary points outside the primary path upon payment of an incremental transportation charge for the additional haul. The Commission directed Northern Border to revise its tariff to be consistent with this policy.

a. July 17 Compliance Filing

40. Northern Border states that it did not propose an out-of-path priority in its initial compliance filing, because it sells its pipeline capacity on a Dth-mile basis versus the more standard zoned pipeline rate design. Northern Border states that, in order to provide shippers an opportunity for a lower out-of-path service on a secondary basis and due to Northern Border's three different firm Rate Schedules (Rate Schedule T-1 for firm forwardhaul shippers, Rate Schedule T-1B for backhaul shippers, and Rate Schedule T-1R for replacement shippers), it must revise its scheduling priorities to recognize the difference not only between In-Path and Out-of-Path nominations, but also between In-Direction and Out-of-Direction gas flows. Northern Border states that this enables it to treat all nominations for out-of-direction gas flows to be out-of-path.

41. Northern Border's proposed capacity allocation procedure is set forth in GT&C Subsection 10.4 (Sheet Nos. 249-258). Section 10.41 provides for the allocation of constrained forwardhaul pipeline capacity when the aggregate quantity of all nominations in a forwardhaul direction exceed the physical capacity of Northern Border's system at a specific pipeline location or segment. Section 10.42 provides for the allocation of constrained backhaul capacity in similar circumstances, and Section 10.42 provides for the allocation of constrained capacity at a point. Each of these sections establish three

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[28] 18 C.F.R. § 284.7(a)(3) (2002).

descending categories of priority. First, the capacity would be allocated to "Shipper Imbalance." Second, the capacity would be allocated to nominations with a flow direction opposite of the physical flow direction at the constrained pipeline location. Third, the capacity would be allocated to nominations with a flow direction in the same direction as the physical flow direction at the constrained pipeline location. Northern Border states that giving nominations with a flow direction opposite to the physical flow direction at the constrained location higher than nomination with a same direction flow is appropriate because the opposite flow direction nominations will create additional capacity, enabling more transactions to flow through the constraint.

42. Section 10.41 provides that, within the second category of nominations with opposite flow direction, constrained forwardhaul capacity will be allocated in the following order: (1) in-path, in-direction Rate Schedules T-1B backhaul service, (2) in-path, out-of direction Rate Schedules T-1/T-1R firm service, (3) out-of-path, in-direction Rate Schedules Rate Schedule T-1B firm backhaul service, (4) out-of-path, out-of-direction Rate Schedules T-1/T-1B firm service and (5) Rate Schedule IT-1 interruptible service. Section 10.41 provides that within the third category of nominations with the same direction as the physical flow, capacity would be allocated in the following order: (1) in-path, in-direction Rate Schedules T-1 and T-1R firm service, (2) interruptible service that feeds Rate Schedules T-1/T1-R firm service, (3) in-path, out-of direction Rate Schedule T-1B firm backhaul service, (4) out-of-path, in-direction Rate Schedules T-1/T-1R firm service, (5) out-of-path, out-of-direction Rate Schedule T-1B backhaul service, and (6) Rate Schedule IT-1 interruptible. Sections 10.42 and 10.43 have similar schemes for allocating constrained backhaul and point capacity.

b. Protests and Comments

43. Peoples agrees that the proposed process appears to be appropriate. However, Peoples requests that the Commission direct Northern Border to clarify and justify why "shipper imbalances" are placed first in the capacity and point allocation mechanism, because imbalances are essentially an interruptible or unauthorized type of service.

44. PGC states that Northern Border's intent to provide an allocation mechanism that takes into consideration both the direction of flow of a nomination as well as whether the nomination is within or outside of the shipper's primary transportation path is consistent with the requirements of Order No. 637. However, PGC complains that, by deleting its

current capacity priority queue,[29] Northern Border's tariff filing left no method for prioritizing nominations in the absence of constraint. PGC is also concerned that the proposed priority method appears to leave Northern Border with the sole discretion to determine whether a backhaul transaction will assist in curing a constraint points on the system, which could lead to discriminatory treatments. PGC requests that the Commission convene a technical conference to allow parties to discuss and understand the proposed allocation mechanism.

45. Indicated Shippers also objects to "shipper imbalances" being the first class of service scheduled in the allocation of constrained forwardhaul and backhaul capacity. Indicated Shippers argues that (1) an interruptible shipper seeking to eliminate an imbalance cannot have a scheduling priority over firm shippers, and (2) firm service used for imbalance elimination should have a lower priority than other firm service nominations, especially where a shipper has 45 days to correct an imbalance.

46. Indicated Shippers states that Northern Border proposes to give a higher priority to backhauls that "potentially create capacity at the constrained location" as compared to forwardhaul firm service. First, Indicated Shippers objects to Northern Border's proposal to give both interruptible and firm backhaul service the higher priority. Indicated Shippers argues that a pipeline cannot give interruptible backhaul service a higher priority than any type of firm service. Indicated Shippers points out that this is especially so here because Northern Border is not proposing to give this high priority to interruptible backhaul service that actually creates capacity. Instead, Northern Border proposes to give this high priority to any interruptible backhaul service that merely has the potential to create capacity. Indicated Shippers explains that, if an interruptible backhaul does not create capacity, scheduling of the backhaul service simply means that other shippers will not get service. As a practical matter, Indicated Shippers states that regardless of the scheduling priority of an interruptible backhaul service, a pipeline should always be able to schedule the service if the service does create capacity.

47. Second, Indicated Shippers contends the both forwardhaul and backhaul firm service should have the same top priority. As a practical matter, Indicated Shippers explains that, if a backhaul that actually creates capacity, a pipeline should always be able to schedule the service regardless of scheduling priority.

c. Northern Border's Reply

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[29] GT&C Section 10.42 of Northern Border's currently effective tariff.

48. Northern Border states that, from its inception, a shipper's payment for utilizing Northern Border's capacity between the primary points is based on the shipper's Dth-mile quantity. Historically, firm shippers on Northern Border have received flexible capacity rights on a primary and secondary basis only between the contracted primary points.

49. Northern Border states that, in compliance with the May 16 Order, it revised its "Capacity Allocation and Confirmation Process" in GT&C Section 10.4 to recognize the different levels of priority for in-path and out-of-path firm transportation transactions within the constraints of the pipeline's capacity and the receipt/delivery point capacities. Northern Border stresses that this was a major change for it.

50. In response to PGC's concern about what allocation method Northern Border would use in the absence of constraints, Northern Border states that when no capacity constraints exist, all firm nomination will be scheduled. But, when the total nominated quantity exceeds the capacity of a location, a pipeline must go through a process of allocating capacity at the constrained pipeline and/or point locations.

51. As to the issue of scheduling backhaul nominations first raised by Indicated Shippers, Northern Border states that when it schedules nomination, it looks at all nominations at one time to determine if backhauls through a constraint will create capacity in order to schedule the maximum amount of higher priority service on a forwardhaul basis. Northern Border explains that, if backhaul nominations were not scheduled first (to be considered at the beginning of the allocation process), it would not be able to consider backhauls when allocating firm forwardhaul services. Further, since there is no time allowed in a cycle to perform a capacity allocation and the related confirmations more than once, any capacity created by backhaul nominations cannot be allocated to the higher priority firm forwardhaul service. As a result, Northern Border argues that if it is not allowed to consider backhaul nominations at the beginning of the allocation process before firm forwardhaul service is allocated, then shippers will be losing an opportunity to efficiently maximize their scheduled transportation capacity.

52. In response to PGC's issue on the potential for discrimination, Northern Border proposes to add back into the lead-in of GT&C Subsection 10.4, the proposed deleted language "To effectuate the confirmation of the Company's pipeline capacity and point capacity on a non-discriminatory basis." Given its answer to PGC's issues, Northern Border states that PGC's request for a technical conference is not necessary.

53. With respect to the issue raised by Peoples and Indicated Shippers regarding "shipper imbalances" being the first class of service scheduled in the allocation of pipeline

and point capacity, Northern Border agrees to eliminate "shipper imbalance" line item in GT&C Subsections 10.41, 10.42, and 10.43.

d. Commission Ruling

54. We agree with Northern Border that, in light of the fact it sells its pipeline capacity on a Dth-mile basis versus the more standard zoned basis, substantial changes to its current effective tariff are required in order to afford a higher priority over mainline capacity to shippers using secondary points within their capacity path than those seeking to use secondary points outside their path. Additionally, as Peoples and Indicated Shippers point out, the proposed allocation process appears to be generally reasonable. We accept Northern Border's capacity allocation proposal subject to the conditions discussed below. Further, given the revisions we require below, we believe there is no need to convene a technical conference at this time.

55. In its answer, Northern Border proposes to eliminate, from GT&C Sections 10.41, 10.42 and 10.43, "shipper imbalance" as the first nominated quantity to be scheduled. Northern Border is directed to revise its proposed tariff accordingly.

56. PGC complains that, by deleting its current capacity priority queue, Northern Border's tariff filing left no method for prioritizing nominations in the absence of constraint. Northern Border answers that when no capacity constraints exist, all firm nominations will be scheduled. In order to eliminate any unnecessary confusion, Northern Border is directed to modify its tariff to clearly state so. Further, in order to alleviate PGC's concern on the potential for discrimination, Northern Border proposes to add back into the lead-in of Subsection 10.4, the proposed deleted language "To effectuate the confirmation of the Company's pipeline capacity and point capacity on a non-discriminatory basis." Northern Border is directed to revise its tariff accordingly.

57. The Commission agrees with Indicated Shippers that all firm services (either forwardhaul or backhaul) should have the same top scheduling priority. Further, all interruptible services (either interruptible forwardhaul or backhaul) should be scheduled after firm services. Northern Border argues that, if backhaul nominations (either firm backhaul or interruptible backhaul) were not scheduled first, then the opportunity to create forwardhaul capacity is lost because there is no time allowed in a cycle to perform a capacity allocation more than once. The Commission finds that Northern Border has not provided any evidence to support its contention. When all the properly designed capacity allocation parameters are automated, Northern Border needs only to enter all nominations in a nomination cycle into the automated system and the automated system will allocate pipeline capacity, via a computerized iteration process, based on the allocation parameters

in order to achieve an optimum use of the pipeline capacity. There appears to be no need to perform capacity allocation more than once, if firm forwardhaul and backhaul are treated as having the same top scheduling priority. Northern Border is directed to revise its tariff as discussed above, or explain why all backhaul and forwardhaul services cannot be considered at one time via automated system in order to efficiently maximize shippers' scheduled transportation capacity.

4. Discount Provisions

58. In the May 16 Order, the Commission directed Northern Border to file revised tariff sheets implementing the Commission policy described in CIG and Granite State (CIG/Grate State policy),[30] and in Order Nos. 637 and 637-A, including a procedure for processing requests to retain discounts within two hours of submission of a request and rebuttable presumption policy.

a. July 17 Compliance Filing

59. Northern Border added GT&C Section 42 (7) to comply with the above directive. GT&C Section 42 (7) provides (1) that a non-negotiated rate shipper with a contract discount may request that such discount apply at a segmented or secondary point, (2) there is a rebuttable presumption that the shipper will retain its discount if Northern Border granted a discount to a similarly situated shipper at the alternate point, (3) if Northern Border grants a discount, shipper shall pay the higher of its contractual rate or the discount rate of the similarly situated Shipper, (4) Shipper's request for a discount must be submitted at least two hours prior to nomination, and (5) Northern Border shall respond to the request within two hours of receipt. However, any request received after 4:00 p.m. shall be responded to by 8:30 a.m. the following business day.

b. Comments

60. Peoples notes that in GT&C Section 42 Northern Border explicitly excludes negotiated rate contracts. Peoples argues that the portability of discounts should apply equally to any contract, whether the contract is for a negotiated rate or discounted rate.[31]

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[30] Colorado Interstate Gas Company, 95 FERC ¶ 61,321 at 62,121 (2001); Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001), reh'g denied, 98 FERC 61,019 (2002).

[31] Citing, Order No. 637-A, at 31,595. "...on a long-line pipeline, once the pipeline
(continued...)

Peoples states that, in Horizon Pipeline Company, L.L.C.(Horizon),[32] the Commission stated that the same reasoning allowing transfer of a discount to another point also applies to negotiated rate. Specifically, Peoples points out that requiring the shipper to forego its negotiated rate below the maximum rate if it segments its capacity would discourage the shipper from segmenting its capacity and inhibit competition between released and pipeline capacity. Peoples requests that the qualification that a shipper has a non-negotiated rate contract should be excluded.

61. Indicated Shippers states that the proposed discount language is applicable only if the pipeline first decides that a discount shipper that is already at the new location is similarly-situated to the shipper that is moving to the new location. Indicated Shippers states the proposal makes no sense.

c. Northern Border's Reply

62. Northern Border argues that the CIG/Granite State policy specifically refers to discounted rates, not negotiated rates. Northern Border contends that (1) negotiated rates are for specific transactions that a pipeline agrees to charge a shipper for its services; (2) the pipeline is at risk for a negotiated rate outcome; and (3) a pipeline should not be forced to accept the portability of a negotiated rate when it is a recourse rate service, i.e., if the CIG/Granite State policy applies to negotiated rates, a shipper with a discount may receive the negotiated rate at the alternate point. Consequently, Northern Border requests the Commission deny Peoples' request.

63. As to Indicated Shippers' arguments, Northern Border states that its proposed tariff language on Sheet No. 303 is exactly the same as the Commission' approved tariff sheet in CIG. Northern Border states that it has complied with CIG/Granite State policy.

d. Commission Ruling

[31](...continued)
has discounted transportation to a downstream delivery point, it has foreclosed the possibility of selling that same capacity at a higher rate to an upstream delivery point. The discount, therefore, should apply to all transactions within the capacity path."

[32]99 FERC ¶ 61,156 at p 61,625 (2002), order on reh'g., 101FERC ¶ 61,247 (2002)

64. The Commission finds that the proposed discount tariff language is generally consistent with the May 16 Order and it is accepted, subject to the two revisions discussed below:

65. First, the proposed tariff discount language specifically prevents negotiated rate shippers from ever receiving the benefit of the CIG/Granite State policy. The Commission finds that such a blanket prohibition on negotiated rate shippers ever taking advantage of the CIG/Granite State policy goes too far. That policy requires that, where a pipeline gives one shipper a discount at a point, it must permit other similarly situated shippers using that point on a secondary basis to pay the higher of the discounted rate or their contract rate.

66. In many cases, a negotiated rate shipper may properly be treated as not similarly situated to the discounted rate shipper, and thus not entitled to the benefit of the CIG/Granite State policy. For example, the Commission recently held in Horizon,[33] that when a shipper's negotiated rate is a formula rate, or uses a different rate design, the pipeline could contend that such a rate is a transaction that is not similarly situated to the discount situation. Therefore, such a negotiated rate could be limited to specific points, without regard to discounts that may be offered at other points. However, there may be other situations where the negotiated rate shipper is similarly situated to a discounted rate shipper. For example, the Commission has permitted pipelines to negotiate a discounted rate with a shipper and then convert it to a negotiated rate, so as to be able in its next rate case to reflect the negotiated rate in the discount adjustment to its rate design volumes.[34] In that case, it may be appropriate to treat the negotiated rate shipper as similarly situated to a discounted rate shipper for purposes of applying the CIG/Granite State policy. Accordingly, the Commission directs Northern Border to modify its tariff to eliminate the provision that only discounted rate shippers can receive the benefit of the CIG/Granite State policy.

67. Second, in its answer to Indicated Shippers' protest, Northern Border states that its proposed tariff language on Sheet No. 303 is verbatim the same as that approved by the Commission in CIG. However, since Northern Border made its instant compliance filing, CIG has made another Order No. 637 compliance filing in Docket No. RP00-325-005. CIG's compliance filing includes a revised tariff provision which provides, in part, the following tariff language regarding discount:

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[33] See 101 FERC ¶ 61,247 (2002).

[34] Midwestern Gas Transmission Co., 101 FERC ¶ 61,310 at 62,244-45 (2003).

> ...There is a rebuttable presumption that the Shipper will retain its discount for Transportation utilizing such point if Transporter grants discounts to others receiving Transportation service utilizing that point. However, Transporter can rebut this presumption by demonstrating that the service to the Shipper at such Segmented or Secondary Point is not similarly situated to other Transportation services receiving a discount at such point...

68. As described below, Northern Border's proposed discount language is not identical to the discount language the Commission approved in CIG. We agree with Indicated Shippers that Norther Border's proposed discount language concerning when the rebuttable presumption applies is confusing. Specifically, the second sentence of proposed Section 42(7) provides that:

> There is a rebuttable presumption that the Shipper will retain its discounted (alternate point) transportation service at such alternate point, if Company granted a discount to a similarly situated Shipper receiving transportation service at the alternate point.

69. Further, the third sentence of the proposed tariff provision provides that:

> However, Company can rebut this presumption by demonstrating that the service to the Shipper at such segmented or secondary Point is not similarly situated to another Shipper receiving a discount at such point.

70. Since both sentences contain the phrase "similarly situated," it appears that the rebuttable presumption is applicable only if the pipeline first decides that a discount shipper that is already at the new location is similarly-situated to the shipper that is moving to the new location. This result is inconsistent with the Commission policy described in CIG and Granite State. Northern Border is directed to revise the proposed tariff provision by replacing the phrase - a similarly situated Shipper - contained in the second sentence described above with the phrase - other Shippers.

5. Penalty Revenue Crediting

71. In the May 16 Order, the Commission directed Northern Border to devise a crediting mechanism to refund all net penalty amounts (net of cost), including interest, associated with all penalty provisions contained in its tariff to both firm and interruptible shippers.

a. July 17 Compliance Filing

72. Northern Border proposes to credit penalty revenues directly to all shippers as an invoice credit in the Billing Month in which the penalty occurred. Northern Border states that, since penalty revenue credits will be made simultaneous with the billing of the penalty, there will be no interest associated with penalty charges.

b. Protests and Comments

73. Peoples states that Sections 6.2(c) of PAL Rate Schedule and 23.32(e) of GT&C provide that costs, which are netted from penalty revenues before revenues are credited, are based on a Chicago Citygate index. Peoples asserts that this may be reasonable for some transactions, but much of the gas transported on Northern Border is delivered to points upstream of Chicago. A Chicago index would not be representative of costs at these points. Peoples contends that netting of costs should be based on actual costs incurred by the pipeline. Further, Peoples states that there needs to be some means for ascertaining the costs that Northern Border seeks to offset pursuant to proposed Sections 6.2 and 23.32 are costs is actually incurred. Peoples states it is not clear that Northern Border will provide any supporting documentation, in the form of a report to justify the level of revenue, net of costs, that it is crediting. Peoples states this is consistent with Commission orders in other Order No. 637 compliance proceedings.[35]

74. Indicated Shippers state that proposed GT&C Section 23.32(c) contains a reference to the "100 percent level of the daily price" which is unclear. Indicated Shippers states the Commission has noted that a pipeline can only net those costs that arise as a result of the transactions that gave rise to the penalty.[36]

75. Indicated Shippers proposes that Northern Border be required, like Dominion,[37] to file a report within thirty days of the end of each month that shows (1) the amount of penalty revenue received during the month, (2) the nexus between the incurrence of related costs and the unauthorized overrun or action that resulted in a penalty, and (3) that the costs were reasonably incurred by the pipeline and are not already reflected in the pipeline's

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[35] Dominion Transmission, Inc. 96 FERC ¶ 61,270 (2001) and Paiute Pipeline Company, 96 FERC ¶ 61,167 at p. 61,755 (2001).

[36] Citing, Transcontinental Gas Pipe Line Corp., 98 FERC ¶ 61,366, at pp. 62,576-577 (2002).

[37] Dominion Transmission, Inc. 96 FERC 61,270 at p. 62,028 (2001).

rates. According to Indicated Shippers, if Northern Border does not satisfy this burden, it should not be allowed to net the pertinent costs. Indicated Shippers states that the same requirements should apply to the crediting mechanism for all other penalties. Further, Indicated Shippers requests the value of confiscated gas involved in a penalty be included in the credit of penalty revenue.

76. Indicated Shippers states that Northern Border's proposal to allocate the penalty credit to shippers "on the basis of the Dth-miles transported for the production month in which the penalty occurred" should be modified to allocate in the manner that the pipeline curtails service (i.e., to firm shippers based on their maximum receipt quantities, and to interruptible shippers based on their nomination quantities).

77. Finally, Indicated Shippers notes that Northern Border proposes to allocate penalty revenues to all shippers. Indicated Shippers states that Commission policy is that the penalty credit should not be allocated to offending shippers. [38]

c. Northern Border's Reply

78. Northern Border states that the Midpoint Chicago LDC Citygate price is an easily verifiable rate and it is not necessary that cost of gas be representative of the location where the infraction occurred, because it is a penalty, not a service.

79. Northern Border is not opposed to the reporting as suggested by protestors. It states, that if required, a report will be posted on its Informational Posting web site on a monthly basis after a penalty is billed on the 15th business day.

80. As to Indicated Shippers' request to include the value of confiscated gas in the credit of penalty revenue, Northern Border states in the rare occasion where any gas volumes would be confiscated by Northern Border in a penalty, such volumes are credited to shippers volumetrically in the computation of the monthly posted fuel and lost and unaccounted for factors. Thus, the shippers are being credited with the confiscated volume; therefore, Northern Border states that it has no incentive to impose the penalties or gain from the retainage of the gas.

81. Northern Border is not opposed to excluding the offending shipper from the sharing mechanism as Indicated Shippers suggests.

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[38] Citing, Southern Natural Gas Co., 99 FERC ¶ 61,042, at p. 61,163 (2002); Stingray Pipeline Co., 98 FERC ¶ 62,587 (2002).

d. Commission Ruling

82. Northern Border proposes a monthly penalty crediting mechanism. Northern Border proposes to use the Midpoint Chicago LDC Citygate price for the purpose of closing out shippers' overage/underage gas volumes resulting from applying Northern Border's penalty provisions. Nevertheless, Northern Border has not demonstrated that it plans to purchase the same amount of gas relating to shippers' violation of Northern Border's penalty provisions in the same month that such volumes have been incurred. Further, using a specific index price does not necessarily represent actual costs incurred by Northern Border for the purpose of purchasing gas volumes to close out shippers' overage/underage gas volumes. We find that the proposed penalty crediting mechanism to refund net revenues does not reflect the actual costs incurred. Consistent with the May 16 Order, Northern Border is directed to revise its proposal to reflect that all penalty revenues, net of costs, will be refunded to its shippers. If Northern Border is concerned that it may not be able to purchase gas to cover shippers' underage within the same month because of its system constraints, Northern Border may devise an annual penalty revenue crediting mechanism so that it will be able purchase gas when operationally feasible during the year. Further, consistent with the Dominion, Northern Border must file a refund report with the Commission after any refund is made.

83. As to the value of confiscated gas, we accept Northern Border's proposal to credit any confiscated gas volumes to its fuel tracker, consistent with a similar ruling in CIG.[39] However, it is not clear that such a mechanism exists in Northern Border's currently effective tariff. Northern Border is directed to revise its tariff accordingly, or demonstrate why its current tariff suffices.

84. Order No. 637 does not dictate the methodology the pipeline must employ to allocate the penalty revenue.[40] Indicated Shippers proposes that any penalty revenues be allocated in the manner that the pipeline curtails service (i.e., to firm shippers based on their maximum receipt quantities, and to interruptible shippers based on their nomination quantities). However, Indicated Shippers has not provided any evidence demonstrating why using shippers' Dth-mile is not a reasonable way of distributing penalty revenue. Since using shippers' Dth-mile will allocate penalty revenue evenly among all shippers (firm and interruptible) based on actual usage of Northern Border's system, it has the potential of encouraging all shippers, including interruptible shippers, to participate when Northern

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[39] See, Colorado Interstate Gas Co., 95 FERC ¶ 61,321 at 62,125 (2001).

[40] See, Transcontinental Gas Pipe Line Corp., 96 FERC ¶ 61,352 at 62,317 (2001).

Border needs help in order to manage its gas receipts and deliveries. Consequently, Northern Border's proposal in this regard is accepted.

85. Lastly, in its answer, Northern Border agreed to Indicated Shippers' request to exclude the offending shipper from the sharing mechanism. While Order No. 637 did not require pipelines to exclude offending shippers from the revenue credits, it did encourage them to do so. In light of Northern Border's willingness to do so, Northern Border is directed to revise its tariff accordingly.

6. Implementation and Effective Dates

86. In the May 16 Order, the Commission stated that Northern Border must file two sets of tariff sheets: one set must include actual tariff sheets relating only to tariff changes that can be implemented immediately and the other must contain all tariff changes including the tariff changes requiring additional time. The Commission will address the appropriate dates for implementation when the Commission acts on Northern Border's compliance filing.

a. July 17 Compliance Filing

87. Northern Border filed two sets of tariff sheets (See Appendices). Appendix A contains proposed tariff sheets which have a requested effective date of September 1, 2002 and Appendix B contains proposed tariff sheets which have a proposed effective date to be on the first day of a calendar month at least 90 days after a final order of the Commission in this proceeding. Northern Border states that its commitment to an implementation date is specifically conditioned on a timely Commission order approving the instant filing without material modifications.

b. Commission Ruling

88. Northern Border requests an effective date of September 1, 2002 for the tariff sheets listed in Appendix A. This simply represents the ordinary notice period under the Commission's regulations, after which time these sheets can be implemented immediately if they are accepted by the Commission. The tariff sheets in Appendix A are accepted effective June 1, 2003, subject to the revisions required above.

89. With respect to the tariff sheets listed in Appendix B, the Commission finds the proposed effective date reasonable and is consistent with other Commission orders

regarding a similar effective date issue.[41] Further, no party protests the proposed effective date. Consequently, the Commission accepts the tariff sheets listed in Appendix B to become effective on the first day of a calendar month at least 90 days after a final order of the Commission accepting these tariff sheets, subject to conditions discussed in the body of this order.

The Commission orders:

(A) The tariff sheets listed in Appendix A and B are accepted to become effective on the date as shown on each of the appendices, subject to the conditions discussed in the body of this order.

(B) The tariff sheets listed in Appendix C are rejected as moot.

(C) Northern Border is directed to file, within 30 days of the date of issuance of this order, revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[41] See, e.g., Canyon Creek Compression Company, 96 FERC ¶ 61,006 (2001).

APPENDIX A

Northern Border Pipeline Company
Docket Nos. RP00-403-002, et al.

Effective June 1, 2003

Sixth Revised Sheet No.1
Third Revised Sheet No. 122
Sixth Revised Sheet No. 201
Fifth Revised Sheet No. 248A.01
Fourth Revised Sheet No. 260
First Revised Sheet No. 260A
First Revised Sheet No. 260B
First Revised Sheet No. 260C
First Revised Sheet No. 260E
Fourth Revised Sheet No. 276
Second Revised Sheet No. 276A
Fourth Revised Sheet No. 298
Fifth Revised Sheet No. 298A
Fourth Revised Sheet No. 299
Seventh Revised Sheet No. 300
Original Sheet No. 303
Sheet Nos. 304-399
Original Sheet No. 457A
Original Sheet No. 457B
Original Sheet No. 457C
Original Sheet No. 457D
Original Sheet No. 457E

APPENDIX B

Northern Border Pipeline Company
Docket Nos. RP00-403-002, et al.

To become effective on the first day of a calendar month that is at least 90 days after a final order on these tariff sheets

Fifth Revised Sheet No. 100
Third Revised Sheet No. 101
Second Revised Sheet No. 101A
Sixth Revised Sheet No.121
Fourth Revised Sheet No. 133
Fourth Revised Sheet No.134
Third Revised Sheet No. 177
Second Revised Sheet No. 180
Third Revised Sheet No. 181
Second Revised Sheet No. 191
Original Sheet No. 192
Sheet Nos. 193-199
Fifth Revised Sheet No. 200
Second Revised Sheet No. 211A
Tenth Revised Sheet No. 213A
Third Revised Sheet No. 213B
Fifth Revised Sheet No. 214
Third Revised Sheet No. 218
Eighth Revised Sheet No. 249
First Revised Sheet No. 249A
Fourth Revised Sheet No. 250
Fifth Revised Sheet No. 250A
First Revised Sheet No. 259A.01
Sixth Revised Sheet No. 251
Second Revised Sheet No. 252
Sixth Revised Sheet No. 253
Second Revised Sheet No. 254
Fifth Revised Sheet No. 255
Fifth Revised Sheet No. 256
Original Sheet No. 256A
Original Sheet No. 256B
Original Sheet No. 256C
Original Sheet No. 256D
Sixth Revised Sheet No. 257
Second Revised Sheet No. 257A
Original Sheet No. 257B
Sixth Revised Sheet No. 258
First Revised Sheet No. 260D
Original Sheet No. 260D.01
Fifth Revised Sheet No. 266
Original Sheet No. 266.01
Original Sheet No. 266.02
Original Sheet No. 266.03
Second Revised Sheet No. 266A
First Revised Sheet No. 268D.03
Original Sheet No. 268D.04
Fifth Revised Sheet No. 268E
Second Revised Sheet No. 406
Third Revised Sheet No. 407
Second Revised Sheet No. 424
Second Revised Sheet No. 429B

APPENDIX C

Northern Border Pipeline Company
Docket Nos. RP00-403-002, et al.

Rejected tariff sheets:

Fifth Revised Sheet No. 286
Second Revised Sheet No. 286A
Second Revised Sheet No. 286B
Original Sheet No. 286B.01
First Revised Sheet No. 286B.01
Original Sheet No. 286B.02
Fourth Revised Sheet No. 286C
Fifth Revised Sheet No. 286C